

**STATUTORY INSTRUMENTS**

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**European Communities (Control of Major Accident Hazards Involving  
Dangerous Substances) Regulations 2006**

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# **European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006.**

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## **European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006**

I, Micheál Martin, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by Section 3 of the European Communities Act 1972 (No. 27 of 1972) as amended by Section 5 of the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Council Directive 96/82/EC of 9 December 1996<sup>1</sup> as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003<sup>2</sup>, hereby make the following regulations:

### *Preliminary and General*

#### **Citation.**

1. These Regulations may be cited as the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006.

#### **Amendment of Safety, Health and Welfare at Work Act 2005.**

2. Part 2 of Schedule 2 to the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) is amended -

(a) by deleting the following from column (2) where it appears opposite “2000” in column (i):

“European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000)”,

and

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<sup>1</sup> O.J. L 10, 14.1.1997, p. 13

<sup>2</sup> O.J. L 345, 31.12.2003, p. 97

(b) by inserting a new line at the end of the Part containing -

(i) in column (1), “2006”, and

(ii) in column (2), “European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006”.

**Interpretation.**

3. (1) In these Regulations, unless the context otherwise requires—

"An Bord Pleanála" means the body referred to in section 102 of the Planning and Development Act 2000 (No. 30 of 2000);

"Authority" means the Central Competent Authority;

"Central Competent Authority" shall be construed in accordance with Regulation 5(1)(a);

"competent authority" means an authority referred to in Regulation 5 and to which Article 16 of the Directive relates;

"dangerous substance" means a substance, mixture or preparation—

(a) listed in Annex I, Part 1 to the Directive (which Annex is set out in Schedule 1), or

(b) fulfilling the criteria laid down in Annex 1, Part 2 to the Directive (which Annex is set out in Schedule 1),

and present as a raw material, product, by-product, residue or intermediate, including those substances which it is reasonable to suppose may be generated in the event of an accident;

"Directive" means Council Directive 96/82/EC of 9 December 1996<sup>1</sup>, on the control of major accident hazards involving dangerous substances as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003<sup>2</sup>;

"Environmental Protection Agency" means the body established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

"establishment" means the whole area under the control of the same person where dangerous substances are present at or above the qualifying quantities specified in columns 2 and 3 of the Tables entitled "Part 1 Named substances" and "Part 2 Categories of substances and preparations not specifically named in Part 1" and set out in Schedule 1, in one or more installations, and for this purpose 2 or more areas which contain installations under the control of the same person and separated only by a road, railway or inland waterway shall be treated as one whole area;

"existing establishment" means an establishment which, prior to the commencement of these Regulations, was subject to the provisions of the 2000 Regulations;

"external emergency plan" has the meaning assigned to it by Regulation 16;

"functional area" means—

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<sup>1</sup> O.J. L 10, 14.1.1997, p. 13

<sup>2</sup> O.J. L 345, 31.12.2003, p. 97

(a) in relation to a planning authority, the functional area of that planning authority as defined in section 2 of the Planning and Development Act 2000,

and

(b) in relation to a local competent authority, the area in respect of which a public authority has been designated under Regulation 5(2) to be a local competent authority;

“functions”, in relation to the Central Competent Authority, competent authorities and local competent authorities includes powers and duties and a reference to the performance of a function includes, with respect to powers, a reference to the exercise of a power;

“hazard” means the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health or the environment or to both human health and the environment;

“health service executive” means the Health Service Executive established under section 6 of the Health Act 2004 (No. 42 of 2004);

"inspector" in relation to the Central Competent Authority, means an officer of the Authority appointed under Regulation 28 to act as an inspector for the purpose of these Regulations;

"installation" means a unit within an establishment in which dangerous substances are, or are intended to be, produced, used, handled or stored, and includes—

(a) equipment, structures, pipework, machinery and tools,

(b) private railway sidings, docks and unloading quays serving the installation,  
and



(c) jetties, warehouses or similar structures, whether floating or not,

which are necessary for the operation of the installation;

"internal emergency plan" shall be construed in accordance with Regulation 15;

"internal waters" has the same meaning as it has in the Maritime Jurisdiction Act 1959 (No. 22 of 1959);

"land" includes any land covered with water;

"local authority" means—

(a) in the case of a city referred to in Part 2 of Schedule 5 to the Local Government Act 2001 (No. 37 of 2001) a city council,

and

(b) in the case of a county referred to in Part 1 of that Schedule and a town or borough referred to in Parts 1 and 2 of Schedule 6 to that Act of 2001, a county council;

"local competent authority" shall be construed in accordance with Regulation 5(2);

"major accident" means an occurrence such as a major emission, fire or explosion resulting from uncontrolled developments in the course of the operation of any establishment, leading to a serious danger—

(a) to human health, or

(b) to the environment,

whether immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances;

"Minister" means the Minister for Enterprise, Trade and Employment;

"new establishment" means an establishment —

(a) which began construction or operation after the commencement of these Regulations;

(b) which began construction or operation prior to the commencement of these Regulations but which was not subject to the 2000 Regulations;

(c) in respect of which there has been a modification after the commencement of these Regulations which makes it subject to Regulations 12 to 18;

(d) in respect of which there has been a modification or a change or increase in the nature or amount of dangerous substances held there such as would make it subject to these Regulations;

"notifiable incident" has the meaning given to it by Regulation 25;

"notification" has the meaning given to it by Regulation 11;

"operator" means any person who operates or holds an establishment or installation or has been given, by or under any enactment, decisive economic power in the technical operation thereof and where the context requires includes any person who proposes to have any such responsibility;

"planning authority" has the meaning given to it by the Planning and Development Act 2000;

"presence of dangerous substances" includes the actual or anticipated presence of dangerous substances in the establishment or the presence of those which it is believed may be generated during loss of control of an industrial chemical process, in quantities equal to or in excess of the thresholds in Parts 1 and 2 of Annex 1 to the Directive (which Annex is set out in Schedule 1);

"risk" means the likelihood of a specific effect occurring within a specified period or in specified circumstances;

"safety report" has the meaning given to it by Regulation 12;

"storage" includes the presence of dangerous substances for the purpose of warehousing, depositing in safe custody or keeping in stock;

“2000 Regulations” means the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000) as amended by the European Communities (Control of Major Accident Hazards Involving Dangerous Substances)(Amendment) Regulations 2003 (S.I. No. 402 of 2003);

(2) In these Regulations any reference to Annex I, II, III, IV, V and VI to the Directive is a reference to the relevant Annex to the Directive and which Annexes are set out in Schedules 1, 4, 2, 5, 6 and 7 respectively.

(3) In determining the presence of dangerous substances the columns in Parts 1 and 2 of Schedule 1 shall be applied in accordance with the provisions of the introduction to that Schedule and the notes set out in each of the respective parts.

(4) In these Regulations any reference to the beginning of construction or operation of an establishment shall be construed, subject to paragraph (5), as a reference to the beginning of construction or operation, as the case may be, of an installation in the establishment, or where there is or is to be more than one

installation in the establishment, the one whose construction or operation, as the case may be, is first begun.

(5) Where after the commencement date of these Regulations an establishment becomes subject to the provisions of any of the Regulations by virtue of any change in the quantity, nature or physical form of the dangerous substances present there any reference in these Regulations to the beginning of operation shall be a reference to the time the establishment first becomes so subject.

(6) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

(7) In these Regulations -

(a) a reference to a Regulation or a Schedule is to a Regulation of or a Schedule to these Regulations unless it is indicated that a reference to some other enactment is intended, and

(b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(8) In these Regulations a reference to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment.

#### **Application.**

4. (1) Subject to paragraph (2), these Regulations shall apply to an establishment where a dangerous substance listed in column 1 of Parts 1 or 2 of Annex I to the Directive (which is set out in Schedule 1) is present in a quantity equal to or exceeding the quantity listed in the entry for that substance in column 2 of those Parts, except that Regulations 12 to 18 shall apply to an establishment where such a

dangerous substance is present in a quantity equal to or exceeding the quantity listed in the entry for that substance in column 3 of those parts.

(2) These Regulations shall not apply to—

(a) any property occupied by the Defence Forces and any land or premises referred to in section 268(1) of the Defence Act 1954 (No. 7 of 1954);

(b) hazards created by ionising radiation;

(c) the occurrence outside an establishment of—

(i) the transport of dangerous substances by road, rail, internal waterways, sea or air;

(ii) intermediate temporary storage associated with a subparagraph (i) activity;

(iii) the loading or unloading of dangerous substances at docks, wharves or marshalling yards;

(iv) the transport to and from another means of transport at docks, wharves or marshalling yards;

(v) the transport of dangerous substances in pipelines and pumping stations;

(d) the exploitation (exploration, extraction and processing) of minerals in mines, quarries or by means of boreholes, with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances;

(e) the offshore exploration and exploitation of minerals, including hydrocarbons;

(f) waste land-fill sites, with the exception of operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined in Annex 1, in particular when used in connection with the chemical and thermal processing of minerals.

**Competent authorities.**

5. (1) For the purpose of these Regulations and Article 16 of the Directive, each of the following shall be a Competent Authority to the extent specified—

(a) the Health and Safety Authority (in these Regulations referred to as the Central Competent Authority) which shall have responsibility for ensuring compliance with these Regulations and shall fulfil the functions assigned to it by these Regulations,

(b) a public authority which the appropriate Minister has designated under paragraph (2) as a local competent authority for the purposes of these Regulations,

(c) a tribunal appointed by the Minister under Regulation 24.

(2)(a) Where the appropriate Minister is of the opinion that the services of a public authority are required for the implementation of any of the functions of a local competent authority under these Regulations in respect of an area, then that Minister shall, subject to subparagraph (b), designate that public authority to be a local competent authority for that area as respects the matters referred to in the designation.

(b) Except in the case of a designation by the Minister, the Minister for the Environment, Heritage and Local Government, the Minister for Health and Children, the Minister for Justice, Equality and Law Reform or the Minister

for Transport, a designation of a public authority under this paragraph shall not be made until all of the Ministers aforesaid have been consulted by the appropriate Minister who intends to make the designation.

(3) Where a public authority was designated under the 2000 Regulations, the designation shall continue in force as if it was made under these Regulations.

(4) In this Regulation—

"appropriate Minister" means—

(a) in relation to the exercise by a Minister of the Government of any powers, functions or duties vested in him or her by virtue of any enactment in respect of a public authority, that Minister, and

(b) in relation to the administration and business of the public service by virtue of any enactment by a Department of State in respect of a public authority, the Minister of the Government having charge of that Department;

"public authority" means any person or body exercising powers or performing duties for the benefit of the public by virtue of any enactment or otherwise under law and includes—

(a) the Garda Síochána.

(b) a local authority,

(c) the health service executive,

(d) a harbour authority within the meaning of the Harbours Act 1946 (No. 9 of 1946),

(e) a company established pursuant to Section 7 of the Harbours Act 1996 (No. 11 of 1996).

**Immunity of competent authorities.**

6. No action or other proceedings shall lie or be maintainable against any Competent Authority or any officer (including, in the case of the Central Competent Authority and any other Competent Authority, an inspector of that Authority and, in the case of a local competent authority, an authorised officer of the authority) or servant of, or a person engaged by, any such authority for the recovery of damages in respect of any injury whatsoever and howsoever caused including but not limited to injuries to persons, property or the environment, alleged to have been caused or contributed to by a failure to perform or to comply with any functions provided for by these Regulations.

**Revocations and savings.**

7. (1) Subject to paragraph (2), the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000), and all amendments of those Regulations are revoked.

(2) The provisions of these Regulations are, except where otherwise provided, in addition to and not in substitution for any other enactment, including—

(a) the Environmental Protection Agency Act 1992 (No. 7 of 1992),

(b) the Explosives Act 1875 (No. 18 of 1875),

(c) the Dangerous Substances Acts 1972 and 1979,

(d) the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005).



## *Major Accident Hazards*

### **Demonstration of safe operation.**

8. (1) This Regulation and Regulations 9 to 11 shall apply to all establishments.

(2) In respect of an establishment to which this Regulation applies, the operator shall, whenever requested by the Central Competent Authority or by an inspector of that Authority, provide or cause to be provided to that Authority or to that person such evidence (including documents) to prove that he or she has—

(a) identified the major accident hazards, and

(b) taken all necessary measures to comply with these Regulations.

### **General duties of operators.**

9. (1) In respect of every establishment it shall be the duty of the operator concerned to take all necessary measures—

(a) to prevent major accidents occurring, and

(b) to limit the consequences of any such major accidents for people and the environment.

(2) Without prejudice to the generality of paragraph (1), the matters in respect of which the necessary measures are to be taken by the operator shall include—

(a) the identification of all major accident hazards in the establishment including an assessment of the extent and severity of the consequences of such accidents;

(b) the provision and maintenance of installations and systems of work and of the means of entry to and exit from the establishment or any part thereof that

are, so far as is reasonably practicable, without risk for people and the environment;

(c) the making of arrangements to ensure that the use, handling, storage and transport of dangerous substances in the establishment are, so far as is reasonably practicable, without risk for people and the environment;

(d) the provision of such information, instruction, equipment, training and supervision as is necessary to ensure, so far as is reasonably practicable, the occupational safety and health of the persons working in the establishment;

(e) the use of the best practicable means—

(i) to prevent a major emission into the environment from any part of the establishment of dangerous substances resulting from uncontrolled developments in that establishment, and

(ii) for rendering harmless and inoffensive such substances as may be so emitted.

(3) An operator of an establishment on being notified in writing by the Central Competent Authority that the establishment has been identified by that Authority as part of a group of establishments where the likelihood and the possibility or consequences of a major accident may be increased because of the location and the proximity of such establishments, and their inventories of dangerous substances, shall—

(a) provide suitable information in an appropriate manner about the establishment to each other establishment in the group to enable them to take account of the nature and extent of the overall hazard of a major accident in their major accident prevention policy documents, safety reports and internal emergency plans,

(b) take account in the manner outlined in sub-paragraph (3)(a) of information provided to him or her by each establishment in the group, and

(c) co-operate with those establishments to enable them to carry out any obligations they have under Regulations 15(1), 17(3), 18(1) and 18(7).

**Major accident prevention policy.**

10 (1) It shall be the duty of every operator to prepare, or cause to be prepared, a statement in writing which shall set out the manner in which major accidents are to be prevented, which statement shall be known and is hereinafter referred to as a “major accident prevention policy document”.

(2) Operators of existing establishments shall, where necessary, amend existing major accident prevention policy documents drawn up pursuant to Regulation 10 of the 2000 Regulations to comply with these Regulations within 3 months of the commencement of these Regulations.

(3)(a) Subject to subparagraph (b), operators of new establishments shall prepare a major accident prevention policy document without delay and in any event within 3 months of the date on which these Regulations first apply to the establishment concerned.

(b) Operators of new establishments under construction shall prepare a major accident prevention policy document prior to commencement of operation.

(4) The major accident prevention policy shall –

(a) be designed to guarantee a high level of protection for people and the environment by appropriate means, structures and management systems, and

(b) take account of the principles specified in Annex III to the Directive (which is set out in Schedule 2).

(5) In the event of a modification of the establishment or any part thereof which shall include any modification to an installation, storage facility, process or nature or quantity of dangerous substances, which could have significant repercussions on major accident hazards, the operator shall review and, where necessary revise, the major accident prevention policy document prior to the commencement of the modification.

(6) An operator shall implement the policy set out in his major accident prevention policy document.

**Notification of establishments.**

11 (1) It shall be the duty of every operator to send to the Central Competent Authority a notification containing the information specified in Schedule 3.

(2) Operators of existing establishments shall, where necessary, amend their existing notifications drawn up pursuant to Regulation 11 of the 2000 Regulations to comply with these Regulations and send the amended notification to the Central Competent Authority within one month of the commencement of these Regulations.

(3) Operators of new establishments shall send the notification to the Central Competent Authority within 3 months of the date on which these Regulations first apply to the establishment concerned.

(4) Notwithstanding paragraph (3) it shall be sufficient compliance with that paragraph if an operator at least 6 months, or such shorter period as the Central Competent Authority may agree in writing before –

(a) the start of construction of an establishment, or

(b) if construction has already begun in relation to an establishment the start of operation of the establishment

sends a notification to the Authority.

(5) An operator shall immediately inform the Central Competent Authority in writing in the event of-

(a) any significant increase in the quantity, or a significant change in the nature or physical form, of a dangerous substance present, as indicated in the notification provided pursuant to paragraph (1), or any significant change in the processes employing it,

(b) modification of an establishment or an installation which could have significant repercussions on major accident hazards, or

(c) permanent closure of the installation.

(6) Obligations referred to in paragraphs (1) to (5) shall not include a requirement to send a notification regarding information which has been included in a safety report already submitted to the Central Competent Authority.

(7) An operator shall as soon as practicable after the commencement of these Regulations or after these Regulations first apply to the establishment in question, but in any event not later than 3 months after the later of those dates, submit in writing to the planning authority in whose functional area the establishment is situated and to any other planning authority whose functional area may be affected by a major accident at the establishment-

(a) confirmation that the establishment is subject to these Regulations, and

(b) the details outlined in paragraphs (a), (d), (e) (g) and (i) of Schedule 3.

(8) Notwithstanding paragraph (7), where an operator has submitted such confirmation and such details pursuant to Regulation 11 of the 2000 Regulations it shall be sufficient compliance with paragraph (7) if that operator submits any amendments of the relevant details necessary for compliance with these Regulations within one month of the commencement of these Regulations.

## **Safety Reports.**

12 (1) It shall be the duty of every operator to prepare and submit in triplicate to the Central Competent Authority, a written safety report in such form as is acceptable to the Central Competent Authority.

(2) The safety report shall -

(a) contain at least the data and information specified in Annex II of the Directive which is set out in Schedule 4 to these Regulations,

(b) name the relevant organisations involved in the drawing up of the report, and

(c) contain an up to date inventory of the dangerous substances present in the establishment.

(3)(a) Operators of establishments who were required to prepare a safety report under Regulation 12 of the 2000 Regulations shall, where necessary, amend that safety report to comply with these Regulations and send the amended safety report to the Central Competent Authority without delay and in any event no later than 6 months after the coming into operation of these Regulations or such longer period as may be agreed in writing by the Central Competent Authority.

(b) Operators of establishments to whom the 2000 Regulations did not apply or to whom the 2000 Regulations did apply but who were not required to prepare a Safety Report under them, but to whom these Regulations apply shall prepare and submit a safety report pursuant to paragraphs (1) and (2) to the Central Competent Authority without delay and in any event no later than one year after the coming into operation of these Regulations.

(4) An operator shall not construct or if construction has already started begin the operation of an establishment unless he or she has prepared, pursuant to

paragraphs (1) and (2) a written safety report and submitted it to the Central Competent Authority at least 6 months before beginning such construction and operation respectively or such shorter period as the Central Competent Authority, in each case, may agree in writing.

(5) Where an operator wishes to construct an establishment he or she shall include in the safety report required by paragraph (1) information which is sufficient for the purposes laid down in paragraphs 2 and 3(a) of Part 1 of Schedule 4 and such information laid down in Part 2 of that Schedule as is relevant for that purpose and shall not begin such construction until he or she has received from the Central Competent Authority the conclusions of its examination of said safety report.

(6) Where an operator wishes to begin operation of an establishment he or she shall include in the safety report required by paragraph (1), information which is sufficient for the purposes laid down in Part 1 of Schedule 4 and the information laid down in Part 2 of Schedule 4 and shall not begin such operation until he or she has received from the Central Competent Authority the conclusions of its examination of said safety report.

(7) A safety report submitted to the Central Competent Authority under paragraph (6) shall not be required to contain information already contained in the said safety report sent under paragraph (5) if that information is still valid and accurate.

(8) Where it is demonstrated by an operator of an establishment to the satisfaction of the Central Competent Authority that particular substances to which these Regulations apply which are present at the establishment, or any part thereof, are in a state incapable of creating a major accident hazard, then the Authority may, in writing and in accordance with the harmonised criteria specified in the Annex to Commission Decision 98/433/EC of 26 June 1998<sup>4</sup> (which are set out in Schedule 9), limit the information required in a safety report to those matters which are relevant to the prevention of residual major accident hazards and the limitation of their consequences for people and the environment.

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<sup>3</sup> O.J. No. L192, 8.7.1998, pp. 19 - 20

(9) A safety report prepared by an operator by virtue of the provisions of this Regulation or Regulation 13 shall include the major accident prevention policy document required by Regulation 10 as an integral part thereof.

(10) The Central Competent Authority may request additional copies of the safety report referred to in this Regulation and the operator concerned shall submit to the Authority, within one month of the receipt of the Authority's request, the number of additional copies so requested.

(11) It shall be the duty of every operator to provide to the Central Competent Authority any information requested by it following an examination of a safety report required by these Regulations.

#### **Review and revision of safety reports.**

13. (1) In respect of an establishment which is continuing in operation, the operator concerned shall—

(a) where no previous safety report has been submitted in accordance with this paragraph, within the period of 5 years of submitting the safety report for the purpose of Regulation 12, or

(b) where a previous report has been submitted, within the period of 5 years of such report having been so submitted, or

(c) where a modification is proposed to an establishment or an installation thereat, a process or procedure carried on there or the nature or quantity of dangerous substances present and that modification could have significant repercussions as respects major accidents, or



(d) where justified by new facts or circumstances or in order to take account of any new technical knowledge about safety matters or any developments in knowledge concerning the assessment of hazards—

(i) on the initiative of the operator, or

(ii) at the request of the Central Competent Authority,

review and where necessary revise, the most recent safety report prepared and submitted in respect of the establishment and submit the revised details without delay to the Central Competent Authority in a manner which, in the opinion of the Central Competent Authority, can be easily integrated into such report or alternatively shall submit a revised report.

(2) Notwithstanding paragraph (1) where any review under paragraph (1)(a) or (b) does not result in a revision of the safety report being required the operator shall inform the Central Competent Authority of this in writing immediately.

(3) Every submission by an operator to the Central Competent Authority pursuant to paragraph (1)(c) shall be submitted by him or her before the modification is implemented.

(4) For the purposes of this Regulation an establishment shall be taken to be continuing in operation if at the date concerned dangerous substances are or are intended to be produced, used, handled or stored in one or more installations within the establishment.

**Investigation of details of a safety report.**

14. (1) Where an operator has—

(a) submitted to the Central Competent Authority a safety report or revised details or a submission for the purpose of Regulations 12 or 13, or

(b) provided the Central Competent Authority with information for the purpose of Regulation 18,

and where the Central Competent Authority considers that the safety report, revised details or submission or the information so provided is inadequate in content, detail or method of assessment, the Authority shall, by notice in writing, require the operator at his or her own expense—

(i) to have the basis of the safety report, details so submitted and of any information so provided examined forthwith by a competent person or organisation,

(ii) to have the report of the examination prepared and submitted to him or her by the competent person or organisation as soon as possible, and

(iii) to furnish the Authority with a copy of that report within 7 days of its submission to him or her.

(2) The report of the examination carried out for the purpose of paragraph (1) shall include details of—

(a) the scope, thoroughness or otherwise and conclusions of the examination, and

(b) such other matters as the Central Competent Authority may specify in the notice under paragraph (1).

(3) If the Central Competent Authority is not satisfied as to the adequacy of an examination or report under paragraph (2) or with the competence of the person or organisation who undertook the examination, the Authority may, by notice in writing, require the operator at his or her own expense to have the matter re-examined in accordance with the notice by a person or organisation nominated by the Authority and the operator shall make available any necessary facilities for such re-examination,

and the Authority shall consider any representations made by the operator concerning matters of confidentiality in relation to the application of this paragraph.

(4) It shall be a good defence for a person prosecuted for contravening this Regulation to prove that such person took all steps which were reasonably practicable to comply with the requirements of the relevant notice.

### **Internal emergency plans.**

15 (1) It shall be the duty of every operator to prepare an adequate emergency plan (in these Regulations referred to as an “internal emergency plan”) in respect of each establishment of which he or she is in control.

(2) Operators shall draw up internal emergency plans pursuant to paragraph (1) in consultation with the personnel working inside the establishment, including long-term relevant subcontracted personnel, each local competent authority in whose functional area the establishment is situated and such other persons as appear to him or her to be appropriate.

(3) Every internal emergency plan shall fulfil the objectives laid down in Part 1 of Schedule 5 and include the data and information laid down in paragraph 1 of Annex IV to the Directive (which is set out in paragraph 1 of Part 2 of Schedule 5).

(4)(a) Operators of existing establishments shall, where necessary, amend their existing internal emergency plans drawn up pursuant to Regulation 15 of the 2000 Regulations to comply with these Regulations within one month of the commencement of these Regulations.

(b) Operators of existing establishments that are required to prepare an internal emergency plan for the first time by virtue of the application of Schedule 1 shall prepare such plan as soon as possible and in any event within 6 months of the coming into operation of these Regulations.

(5) Operators of new establishments shall prepare the internal emergency plan required by paragraph (1) either -

(a) prior to the commencement of operation, or

(b) in cases where the establishment is in operation at the time these Regulations first apply to the establishment concerned, as soon as possible but not later than 6 months after the date on which these Regulations first apply to that establishment.

(6) An operator who has prepared an emergency plan pursuant to this Regulation shall periodically and as often as the circumstances require it but in any event at intervals not exceeding 3 years –

(a) review and, where necessary, revise and update the plan, and

(b) ensure that the plan is tested,

and any such review shall take into account changes occurring in the establishment concerned or within the emergency services concerned, new technical knowledge and knowledge concerning the response to major accidents.

(7) An operator who has prepared an emergency plan pursuant to this Regulation shall put it into effect without delay when –

(a) a major accident occurs, or

(b) an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.

### **External Emergency Plans.**

16(1) It shall be the function of every local competent authority, upon being notified by the Central Competent Authority that –

(a) in its functional area an establishment is in operation or is proposed to be in operation, or

(b) outside its functional area (whether within the State and its internal waters or otherwise) an establishment is in operation or is likely to be in operation which, in the opinion of the notifying authority, could cause a major accident

leading to a serious danger within the functional area of the local competent authority to people or to the environment,

to prepare, subject to paragraph 3(a), in accordance with Regulation 17 an emergency plan (in these Regulations referred to as an ‘external emergency plan’) for action outside the establishment in relation to possible major accidents at the establishment and which shall include arrangements for co-ordinating off-site action and resources.

(2) A local competent authority shall provide such information from the external emergency plan to the operator concerned as is relevant to the performance of the duties of that operator under Regulations 15 and 18.

(3) Where a person is responsible for, or proposes to be responsible for, an establishment outside the State or in its internal waters and in respect of which a notification has been given to a local competent authority by virtue of paragraph 1(b) then –

(a) in preparing the external emergency plan, Regulation 17 shall be construed as if it did not include paragraph (3), and

(b) the local competent authority shall provide to the said person such information from the external emergency plan as it considers appropriate.

#### **Supplementary provisions to Regulation 16.**

17 (1) An external emergency plan prepared by a local competent authority in respect of an establishment shall -

(a) fulfil the objectives specified in Article 11(2) of the Directive which are set out in Part 1 of Schedule 5,

(b) include the data and information laid down in paragraph 2 of Annex IV to the Directive (which is set out in paragraph 2 of Part 2 of Schedule 5), and

(c) take into account the need to facilitate enhanced co-operation in civil protection assistance in major emergencies.

(2) A local competent authority shall, in preparing an external emergency plan, consult with –

(a) other local competent authorities in whose functional area the establishment to which the plan relates is or is to be situated or whose functional area might be affected by a major accident at the establishment,

(b) such persons or authorities outside the State as have responsibility for the preparation and implementation of external emergency plans in respect of such establishments as are referred to in Regulation 16(3),

(c) the operator in respect of whose establishment the plan relates,

(d) the Central Competent Authority,

(e) the public, and

(f) in relation to possible risks of environmental pollution from a major accident, the Environmental Protection Agency.

(3)(a) For the purpose of enabling any local competent authority to prepare or amend an external emergency plan in relation to an establishment, the operator shall provide such local competent authority with such information as may reasonably be required for that purpose including the nature, extent and likely effects inside and outside the relevant establishment of possible major accidents and the information shall be supplied in sufficient time and in such form as may be requested to allow the local competent authority to meet its obligations pursuant to paragraph (4).

(b) Establishments or groups of establishments identified by the Central Competent Authority pursuant to Regulation 26 shall co-operate in

supplying information to the competent authority for the preparation of external emergency plans.

- (c) Any information requested by a local competent authority from an operator or operators pursuant to subparagraphs (a) and (b) shall be supplied not later than one month after having been so requested or within such longer period as the local competent authority may specify in writing.

(4) An external emergency plan shall be prepared by the relevant local competent authority using such information as is available to it -

- (a)
  - (i) in the case of a new establishment which has commenced operation prior to falling within the scope of these Regulations, within one year after the date on which these Regulations apply to the establishment concerned,
  - (ii) in the case of a new establishment which has not commenced operation prior to falling within the scope of these Regulations, prior to operation,
  - (iii) in the case of an existing establishment for which there is a requirement to prepare an external emergency plan for the first time by virtue of these Regulations, within one year of the coming into operation of these Regulations,

or

- (b) not later than 4 months after being notified by the Central Competent Authority of the operation of an establishment or the proposed operation of an establishment,

whichever is the later.

(5) The relevant local competent authority shall, where necessary, amend any existing external emergency plan prepared pursuant to Regulation 17 of the 2000 Regulations to comply with these Regulations within 3 months of the coming into force of these Regulations.

(6) Whenever a local competent authority informs the Central Competent Authority that an operator has not complied with a request made by it under paragraph (3), the Central Competent Authority shall, if of the opinion after consulting with the local competent authority that the request was reasonable, take such measures as are necessary to have the information provided.

(7) (a) A local competent authority may authorise in writing, either generally or specifically, any of its officers (hereinafter referred to as an "authorised officer") to do either or both of the following,—

(i) enter at all reasonable times any establishment within its functional area, and

(ii) require and receive from the operator concerned such information as the local competent authority may reasonably require for the purpose of preparing or amending the external emergency plan.

(b) An authorised officer shall be furnished with a warrant of the officer's appointment and, when exercising any power conferred on an authorised officer under these Regulations, shall, if requested by any person affected, produce the warrant to that person.

(8) A local competent authority which has prepared an emergency plan pursuant to Regulation 16 shall periodically and as often as the circumstances require it but in any event at intervals not exceeding 3 years –

(a) review and, where necessary, revise the plan which revision shall be carried out in consultation with the public, and

(b) ensure that the plan is tested,



and any such review shall take into account changes occurring in the establishment concerned or within the emergency services concerned, new technical knowledge and knowledge concerning the response to major accidents.

(9) Where in preparing or amending an external emergency plan for an establishment a local competent authority is satisfied that a major accident may have an effect outside the State or its internal waters then such authority shall provide sufficient information to the persons specified in Regulation 17(2)(b) in the potentially affected State to allow the preparation of such emergency plans as may be necessary.

(10) A local competent authority which has prepared an emergency plan pursuant to Regulation 16 shall put it into effect without delay when –

- (a) a major accident occurs, or
- (b) an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.

(11) The Central Competent Authority may decide, by virtue of the information contained in a safety report that the requirement for a local competent authority to prepare an external emergency plan shall not apply and in that event shall notify the local competent authority in writing of that decision, giving reasons for that decision when so notifying the local competent authority.

### **Information for the safety of the public.**

18 (1) An operator of an establishment shall-

- (a) inform -
  - (i) persons other than persons working at the establishment, and
  - (ii) institutions or organisations serving the public (such as schools and hospitals)

in the specified area on safety measures and on the correct behaviour which should be adopted in the event of an accident, and

(b) make the information referred to in subparagraph (a) and the safety report referred to in Regulations 12 and 13 available to any member of the public who requests it.

(2) In preparing the information referred to in clauses (i) and (ii) of paragraph (1)(a), the operator shall ensure that –

(a) documentation includes the information specified in Annex V of the Directive (which is set out in Schedule 6), and

(b) consideration is given to any relevant provisions in the external emergency plan.

(3) The operator shall ensure that the information referred to in paragraph (1)(a) is supplied to the persons, institutions or organisations referred to in clauses (i) and (ii) of paragraph (1)(a) in the most appropriate form, without any such person, institution or organisation having to request it, and the operator shall ensure that the supply of the information is repeated at least every 5 years and in any event when there is any material change in the information provided.

(4) The information referred to in clauses (i) and (ii) of paragraph (1)(a) shall be reviewed by the operator at least every 3 years and in any event whenever a modification of an establishment to which Regulation 13(1)(c) refers occurs, and if as a result of such review the information requires to be revised the operator shall make such revisions and arrange for the supply of the revised information to the persons referred to in paragraph 1(a).

(5)(a) The operator of an existing establishment shall review any information provided pursuant to paragraphs (1) and (2) of Regulation 19 of the 2000 Regulations and, where necessary, amend such information in the light of these Regulations and supply the amended information to the persons and establishments referred to in paragraph (1) within 3 months of the commencement of these Regulations.

(b) The operator of an existing establishment to which the requirements of paragraphs (1) and (2) apply for the first time shall ensure that the information referred to in paragraph 1(a) is supplied to persons referred to in that paragraph within 6 months of the commencement of these Regulations.

(6) The operator of a new establishment shall ensure that the information referred to in paragraph (1)(a) is supplied to persons referred to in that paragraph -

(a) in the case of a new establishment which has not yet commenced operations, before it commences operation, or

(b) where the establishment has commenced operation prior to becoming subject to these Regulations, within 6 months of the date upon which these Regulations first apply to the establishment concerned.

(7) Establishments or groups of establishments identified by the Central Competent Authority pursuant to Regulation 26 shall co-operate in informing the public.

(8)(a) The operator of an establishment may request any local competent authority in whose functional area the establishment is situated to enter into an agreement with the operator whereby such authority would arrange for –

(i) the supply of the information referred to in paragraph (1)(a) to the persons referred to in that paragraph,

(ii) the making available of the information referred to in paragraph (1)(a) to members of the public who request it, and

(iii) subject to the provisions of paragraph (12), make the safety report referred to in Regulations 12 and 13 available to any member of the public who requests it.

(b) In the absence of such an agreement the operator shall remain responsible for ensuring that he or she complies with this Regulation.

(c) A local competent authority shall not enter into an agreement referred to in subparagraph (a) unless -

(i) the agreement specifies the information to be provided for the purpose of paragraph (1), and

(ii) the operator undertakes to provide the information in an appropriate form, and

where an agreement is entered into, the authority concerned shall take the measures necessary for the application of paragraph (1) in respect of that information.

(d) A local competent authority may charge the operator a fee in respect of the performance of its obligations under the agreement and any such fee shall be recoverable by the local competent authority from the operator as a simple contract debt.

(9) In this Regulation “the specified area” means that area which is liable to be affected by a major accident at the establishment.

(10)(a) The specified area shall be determined –

(i) by the operator concerned with the agreement of the Central Competent Authority, or

(ii) where the operator concerned and the Central Competent Authority are not in agreement, by the Central Competent Authority.

(b) Where the Central Competent Authority has been obliged, by reason of failure to co-operate, delay or other unreasonable behaviour on the part of the operator concerned, to determine the specified area under subparagraph (a)(ii), then the reasonable expenses incurred by the Authority (or such portion thereof as may be attributable to such failure, delay or other unreasonable behaviour) in determining that area shall be recoverable by the Authority from that operator as a simple contract debt.

(11) Where the Central Competent Authority or such persons or authorities referred to in Regulation 17(2)(b) brings to the attention of a local authority, which is designated as a local competent authority by virtue of Regulation 5(2), that a major accident at an establishment outside the State or its internal waters may potentially affect persons in the specified area within its functional area, the local authority shall—

(a) consult with the persons and authorities laid down in Regulation 17(2)(b),

(b) fulfil the obligations referred to in Regulation 18(1)(a) and (2)(a) in so far as the information required is available, and

(c) ensure that the information provided takes into consideration any relevant provisions in the external emergency plan prepared by virtue of Regulation 16(1)(b).

(12) Notwithstanding the provisions of this Regulation, an operator need not make available such parts of a safety report as the Central Competent Authority agrees in writing may be omitted for the purposes of this Regulation, and which parts relate to matters of industrial, commercial or personal confidentiality, public security or national defence, and in such event the report as so amended shall be furnished to the Central Competent Authority, and such amended report shall be made available to the public in lieu of the safety report prepared pursuant to Regulations 12 and 13.

(13) Where pursuant to paragraph (10)(a) it is established that a major accident may have an effect outside the State then the operator shall provide the information referred to in paragraph (1), in such reasonable quantities as may be requested, to the persons specified in Regulation 17(2)(b).

**Notice for information.**

19. (1) The Central Competent Authority may, for the purpose of obtaining information which the Authority requires for the discharge of its functions, by a

notice in writing (in this Regulation referred to as "a notice for information") served on any person, require such person to furnish to the Authority such information about such matters as may be specified in the notice and in such form and manner and within such period of time as may be specified therein.

(2) The Central Competent Authority shall not serve a notice for information unless, having regard to all the circumstances of the particular case, that information is in the opinion of the Authority reasonably required for the evaluation of any major accident hazard created by, or which in the opinion of the Authority might be created by, an establishment.

(3)(a) Where a person is aggrieved by a notice for information served on him or her, he or she may, within the period of 21 days beginning on the day on which the notice is so served, appeal to a Judge of the District Court against the notice and in determining the appeal the Judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable so to do, confirm the notice, with or without modification, or

(ii) cancel the notice.

(b) Where on the hearing of an appeal under this paragraph a notice for information is confirmed the Judge may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case he or she considers appropriate.

(c) An appeal by a person under this paragraph shall be brought before and heard and determined by a Judge of the District Court for the time being assigned to the district where—

(i) the establishment, or any part thereof, to which the notice for information relates is situated, or

(ii) the person to whom the notice for information was addressed ordinarily resides or carries on any profession, business or occupation.

(d) The Judge determining an appeal under this paragraph may make such order as to the payment of costs in respect of the appeal as he or she considers appropriate.

(4) Where no appeal is brought against the notice a person to whom a notice for information is addressed shall provide the information requested in that notice —

(a) on the expiration of the period during which such an appeal may be taken, or

(b) within the period of time specified in the notice for the purpose of the furnishing of the information, or

(c) prior to the expiry of such extended period for so doing as the Central Competent Authority may agree in writing,

whichever is the later.

(5) Where an appeal is brought in accordance with the provisions of this Regulation and the notice is confirmed on appeal (with or without modification) or the appeal is withdrawn, a person to whom a notice for information is addressed shall provide the information requested in that notice—

(a) on the day following the day on which the notice is so confirmed or the appeal is withdrawn, or

(b) within the period of time specified in the notice for the purpose of the furnishing of the information, or

(c) in case the operation of the notice has been suspended in accordance with paragraph (3)(b), on the expiration of the period that the Judge of the District Court considered appropriate for the purpose of that paragraph,

whichever is the later.

(6) Where any opinion of the Central Competent Authority to which paragraph (2) relates purports to be contained in any document which—

(a) purports to have been made by or at the direction of the Authority, and

(b) is produced in evidence by an officer of the Authority in any proceedings,

such document shall be admissible in evidence and shall be evidence of any such opinion in such proceedings without further proof.

(7) Information sought pursuant to paragraph (1) may include information—

(a) to fully assess the possibility of a major accident,

(b) to determine the scope of possible increased probability, aggravation or consequences of major accidents,

(c) to permit the preparation of an external emergency plan,

(d) to allow substances to be taken into account which, due to their physical form, particular conditions or location, may require additional consideration.



## *Major Accidents*

### **Scene of major accident.**

20. (1) Subject to paragraph (2), where a major accident occurs in or about or in connection with an establishment, no person shall, except with the consent of an inspector of the Central Competent Authority, or for the purpose of administering medical aid to persons injured in the accident or the extinguishing of fires or the prevention of damage to the environment, disturb the place where the accident occurred, or tamper with anything in that place.

(2) Where the operator concerned informs the Central Competent Authority of the occurrence of a major accident in accordance with Regulation 21(1)(a) and no action has been taken by the Central Competent Authority or an inspector thereof within the period of 3 clear working days from the receipt of such information, then paragraph (1) shall cease to have effect on the expiration of that period.

(3) In any proceedings taken in respect of a contravention of this Regulation consisting of the doing of any act, it shall be a defence to prove that the doing of such act was necessary—

(a) to secure the safety or health of any person, or

(b) to secure the safety of the place where the accident occurred, or

(c) to prevent damage to the environment.

(4) In this Regulation "working day" means a day other than a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997), a Saturday or a Sunday.

### **Notification of major accidents.**

21. (1) Where a major accident occurs, the operator shall—

- (a) immediately inform the Central Competent Authority of that occurrence,
- (b) provide the Central Competent Authority with the following information as soon as it becomes available—
  - (i) the circumstances of the accident,
  - (ii) the dangerous substances involved,
  - (iii) the data available for assessing the effects of the accident on people and the environment, and
  - (iv) the emergency measures taken,
- (c) inform the Central Competent Authority of the steps envisaged to alleviate any medium-term or long-term effects of the accident and to prevent any recurrence of such an accident.
- (d) update the information provided if further investigation reveals additional facts which alter that information or the conclusions drawn.

(2) The Central Competent Authority shall supply each of the local competent authorities with such information relating to major accidents as each of those authorities may reasonably require for the purpose of reviewing their external emergency plans which have been prepared under Regulation 16.

(3) It shall be the duty of any person having any information relevant to the occurrence or analysis of a major accident to provide such information to the Central Competent Authority when requested to do so.

**Examination and tests of plant, process or procedure.**

22. (1) Where a major accident occurs at an establishment and the Central Competent Authority is of the opinion that the accident may have been caused (whether in whole or in part) by any installation or part thereof, process or procedure carried on there, the Authority, if it considers it necessary for the proper investigation of the accident by it, shall by notice in writing require the operator at his or her own expense—

(a) to have that installation, or in case the accident is believed to have been so caused by a part thereof, that part, examined and tested forthwith by a competent person,

(b) to have that process or procedure investigated thoroughly forthwith, including any necessary analysis and tests, by a competent person,

(c) to have a report of the results of the examination, tests and investigation prepared and submitted to the operator by the person by whom the examination, tests or investigation (as the case may be) was carried out as soon as practicable but in any event not later than 28 days after the completion of the examination, tests or investigation or such longer period as the Central Competent Authority may agree to in writing, and

(d) to furnish a copy of the report to the Authority within 7 days of its being submitted in accordance with subparagraph (c).

(2) A report required by virtue of paragraph (1) shall include particulars of—

(a) the name and qualifications of the person or persons conducting the relevant examination, test or investigation,

(b) the manner in which the relevant examination, test or investigation was carried out,

(c) the method used when making any tests or analysis,

(d) any structural or other weakness or defect which in the opinion of the person carrying out the examination would affect the ultimate strength of, or account for any failure in, the installation or the part thereof examined, and

(e) such other matters as the Central Competent Authority may specify when making the requirement.

(3) If the Central Competent Authority is not satisfied as to the adequacy of a report submitted for the purpose of this Regulation, the competence of a person conducting the examination or any test or investigation for the purpose of the report, or the adequacy of the examination or of any test or investigation, the Authority may by notice in writing require the operator to have a further examination, test or investigation carried out at his or her own expense by a person nominated by the Authority and, where the Authority so requires, the operator shall provide the necessary facilities for such further examination, test or investigation.

(4) An operator shall comply with a notice issued in accordance with paragraph (1) or (3).

(5) It shall be a good defence for a person prosecuted for contravening this Regulation to prove that he or she used every reasonable effort to comply with the requirements of the relevant notice.

(6) The Central Competent Authority shall consider any representations made by the operator on matters of confidentiality in relation to the application of this Regulation.

**Special reports on major accidents by inspector.**

23. (1) Whenever a major accident occurs, the Central Competent Authority may cause an inspector of the Authority to prepare a special report on that accident or on any aspect thereof to the Authority.

(2) The Central Competent Authority or an inspector of that Authority may consult with the Environmental Protection Agency regarding the contents of the special report or any aspect thereof.

(3) The Central Competent Authority may make available the whole or any part of a special report made by virtue of paragraph (1) to any local competent authority for the purpose of enabling or assisting any such authority to perform its functions.

(4) The Central Competent Authority may cause the whole or any part of a special report prepared by virtue of paragraph (1) to be made available to the public at such time and in such manner as the Minister considers appropriate.

(5) The Central Competent Authority shall consider any representations made by the operator on matters of confidentiality in relation to the application of this Regulation.

(6) Nothing in this Regulation shall be construed as giving to an operator or any other person the right to see or to be shown a special report or any part thereof, prior to the special report or any part thereof being made available to the public or to a local competent authority.

**Power of Minister to direct formal investigation.**

24. (1) The Minister may, where he or she considers it appropriate so to do, direct a formal investigation to be held into—

(a) the causes and circumstances of any major accident or notifiable incident,  
or

(b) an alleged failure of a local competent authority to perform its functions  
under these Regulations,

but the Minister shall not make such a direction until after he or she has obtained the consent to the holding of the investigation of every other Minister of the Government who has appointed a local competent authority whose functional area has been affected by such major accident or notifiable incident or which allegedly has failed to perform its functions, as the case may be.

(2) The provisions of this Regulation shall have effect in relation to the investigation.

(3) The Minister may appoint a competent person or persons to hold the investigation, and may appoint any person possessing legal or special knowledge to act as assessor in relation to the investigation.

(4) The person or persons so appointed (in these Regulations referred to as "the tribunal") shall hold the investigation in such manner and under such conditions as the tribunal may think most effective for ascertaining the causes and circumstances of the major accident or notifiable incident or for investigating the alleged failure of a local competent authority to perform its functions, as the case may be, and for enabling the tribunal to make its report.

(5) The tribunal shall have for the purposes of the investigation all the powers of a Judge of the District Court when hearing a prosecution for an offence under these Regulations and in addition, shall have the power—

(a) to enter and inspect any place or building the entry or inspection whereof appears to the tribunal requisite for the said purposes,

(b) by summons signed by a member of the tribunal to require the attendance of all such persons as it thinks fit to call before it and examine on oath for the said purposes, and to require answers or returns to such inquiries as it thinks fit to make,

(c) to require the production in legible form of, and to inspect and copy, any information kept or capable of being reproduced, in a legible form,

(d) to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by that person in the course of the examination.

(6) Persons attending as witnesses before the tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to a taxing master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses.

(7) The tribunal shall make a report to the Minister stating its findings as to the causes and circumstances of the major accident or notifiable incident, or its conclusions on the alleged failure of the local competent authority in question to perform its functions, as the case may be, and adding any observations which the tribunal thinks right to make.

(8) The tribunal may direct that the expenses or any part thereof incurred in and about an investigation under this Regulation (including the remuneration of any persons appointed to act as assessors) be paid in whole or part by any person summoned before it who appears to the tribunal to be, by reason of any act or default on his or her part or on the part of any servant or agent of his or hers, responsible in any degree for the matter under investigation by the tribunal but any such expenses not directed to be so paid shall be deemed to be part of the expenses of the Minister in the administration of these Regulations and in the case of a dispute as to the amount of such expenses or any part thereof, the dispute shall be referred by the tribunal to a

taxing master of the High Court who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses.

(9) A person shall not without reasonable excuse (proof whereof shall lie with him or her)—

(a) refuse, after having had the expenses (if any) to which he or she is entitled tendered to him or her, to comply with any summons or requisition of the tribunal, or

(b) prevent or impede the tribunal in the execution of its duty.

(10) The Minister may cause the whole or any part of the report of the tribunal made by virtue of paragraph (7) to be made available to the public at such time and in such manner as the Minister considers appropriate.

(11) The Minister may cause the report of the tribunal or any part of the report to be made available to the relevant local competent authorities as necessary in relation to their functions under these Regulations.

(12) The Minister, prior to making available the report or any part thereof to the public pursuant to paragraph (10), or a relevant local competent authority pursuant to paragraph (11), shall consider any representations made by the operator to the tribunal regarding matters of confidentiality.

(13) Nothing in this Regulation shall be construed as giving to an operator or any other person the right to see or be shown the report of the tribunal or any part thereof, prior to such report, or part thereof, being made available to the public or to a relevant local competent authority.

#### **Notifiable incidents and register.**

25. (1) Whenever an incident (in these Regulations referred to as a "notifiable incident") of the type specified in Annex VI to the Directive (which is set out in



Schedule 7) or of the type specified in Schedule 8 occurs at an establishment the operator concerned shall immediately inform the Central Competent Authority of that incident.

(2) There shall be kept by every operator a register which shall contain the following information on every notifiable incident that occurs—

(a) in case the notifiable incident is a major accident, the information set out in Regulation 21(1)(b), and

(b) in any other case—

(i) the circumstances of the incident,

(ii) the dangerous substances involved (if any), and

(iii) the emergency measures taken.

(3) Any information required to be kept under paragraph (2) shall be included in the register as soon as possible after the occurrence of the notifiable incident to which it relates and shall be kept on that register for at least 10 years after that occurrence.

### *Enforcement and Regulation*

#### **Functions of Central Competent Authority.**

26. (1) Without prejudice to such other functions or powers assigned to the Central Competent Authority by these Regulations the Authority shall—

(a) supply such information to the Commission of the European Communities as is required by paragraph 6(c) of Article 9 of the Directive,

(b) supply such information as is required by paragraph 3 of Article 13 of the Directive,

(c) fulfil the requirements laid down in paragraph 2 of Article 14 of the Directive in relation to major accidents,

(d) supply such information to the Commission of the European Communities as is required by Article 15 of the Directive in respect of major accidents,

(e) fulfil the requirements laid down in Article 17(1) of the Directive in relation to prohibition of use,

(f) fulfil the inspection requirements laid down in paragraphs 1 and 2 of Article 18 of the Directive,

(g) exchange information as required by paragraphs 1 and 1a of Article 19 of the Directive, and

(h) provide the report to the Commission as required by paragraph 4 of Article 19 of the Directive.

(2) The Central Competent Authority shall, using the information received from an operator in a notification sent by virtue of Regulation 11 or a safety report or from other sources of information, identify establishments or groups of establishments where the likelihood and the possibility or consequences of a major accident may be increased because of the location and proximity of such establishments, and their inventories of dangerous substances and on such identification shall inform each operator in writing for the purpose of Regulation 9(3).

(3) The Central Competent Authority shall advise the Commission of any establishments to which Regulation 12(8) has been applied and supply the reasons for such application.

(4) The Central Competent Authority within a reasonable period of time after receiving a safety report or revised details required by Regulations 12 and 13 shall—

(a) examine the safety report or revised details,

(b) communicate the conclusions of its examination of the safety report or revised details to the operator, if necessary after requesting further information, and

(c) notify in writing the relevant local competent authorities for the purpose of Regulation 16(1).

(5) The Central Competent Authority may consult as appropriate with the Environmental Protection Agency on the information contained in a safety report that is relevant to the possible risks of environmental pollution from a major accident.

**Advice on Land Use Planning.**

27. (1) For the purpose of ensuring that technical advice on the risks arising from an establishment is available to a planning authority or An Bord Pleanála, either on a case by case basis or on a generic basis, when decisions are taken relating to—

(a) the siting of new establishments,

(b) the modification of an existing establishment to which Article 10 of the Directive applies, or

(c) proposed development in the vicinity of an existing establishment,

the Authority may, and shall when requested to do so by a planning authority or An Bord Pleanála, give technical advice to a planning authority or An Bord Pleanála (as the case may be) on the basis of the information available to the Authority.

(2) Where, pursuant to paragraph (1), a planning authority or An Bord Pleanála requests technical advice in relation to a planning application or appeal or reference under section 5 of the Planning and Development Act 2000 (No. 30 of 2000) concerning a proposed development in the vicinity of an establishment such advice shall be furnished by the Authority to the requesting body within 5 weeks of the receipt of the request, unless the body which requested such advice extends, in writing, such period.

(3) Where, pursuant to paragraph (1), a planning authority or An Bord Pleanála requests technical advice in relation to a planning application or appeal or reference under section 5 of the Planning and Development Act 2000 concerning a proposed establishment or a modification to an existing establishment to which Article 10 of the Directive applies, such advice shall be furnished by the Authority to the requesting body—

(a) within 5 weeks of the receipt of the request, or

(b) where the Authority, within 3 weeks of the receipt of the request, seeks further information in writing from the applicant for permission, within 5 weeks of receipt of such information by the Authority.

(4) In any other case of a request by a planning authority or An Bord Pleanála for technical advice, such advice shall be furnished by the Authority to the requesting body within 6 weeks of the receipt of the request or such longer period as may be specified in the request.

(5) Where, by virtue of paragraph (3)(b), the Authority seeks further information from the applicant for permission, it shall so advise the body which requested the advice.

(6) For the purpose of ensuring that technical advice on the risks arising from an establishment are available to a decision-making body when decisions are made in relation to the development of a transport link in the vicinity of an establishment, the

Authority shall, where requested to do so by such body, give technical advice to that body on the risks arising from the establishment.

(7) In paragraph (6)—

"decision-making body" means a Minister of the Government or a public body authorised or required by law to make a decision, order, recommendation or report.

### **Inspectors.**

28. The Central Competent Authority may appoint any of its officers, consultants, advisers or other persons as it deems appropriate to be inspectors of the Authority for the purposes of these Regulations.

### **Warrant of appointment as inspector.**

29. Every inspector of the Central Competent Authority shall be furnished with a warrant of his or her appointment and, when exercising any power conferred on an inspector under these Regulations, shall, if so requested by any person affected, produce the said warrant, or a certified copy of it, to that person.

### **General powers of inspectors.**

30. (1) An inspector of the Central Competent Authority shall, for the purpose of the execution of these Regulations, have power to do all or any of the following things—

(a) enter, inspect, examine and search at all times any place which he or she has reasonable cause to believe to be an establishment,

(b) take with him or her a member of the Garda Síochána if he or she has reasonable cause to anticipate any serious obstruction in the execution of his or her duty,

(c) require the production in a legible form of and inspect and take a copy of any information kept or capable of being reproduced in a legible form which is

in the possession or under the control of an operator and is required to be kept by virtue of the provisions of these Regulations or is required for the purpose of any examination or inquiry under these Regulations,

(d) make such examination and inquiry (including examination and inquiry in relation to external emergency plans) as may be necessary to ascertain whether the provisions of these Regulations are being complied with,

(e) require any person whom he or she finds at an establishment to give such information as it is in the power of such person to give as to who is the operator or the person in control of any part of the establishment,

(f) require the operator or person in charge of an establishment or any part thereof, or any person at an establishment and any person employed there at the time of the request or at any time in the 6 months preceding such request to give to him or her such assistance and information and to produce to him or her such books, documents or other records in that person's power or procurement as he or she may reasonably require for the purposes of his or her functions under these Regulations,

(g) take a sample of the water, air or soil from any part of an establishment,

(h) as regards any article or substance he or she finds at an establishment, require the operator or any person he or she finds on the establishment or a person appearing to him or her to be in possession of the article or substance, to supply without payment, for test, examination or analysis, a sample thereof,

(i) take any measurement or photograph or make any tape or other electrical or electronic recording which he or she considers necessary for the purpose of any examination or inquiry under these Regulations,

(j) collect the information necessary for the full analysis of any major accident,

(k) enter at all times and inspect any land or building (other than a dwelling) and to take a sample of the water, air or soil from any part of such land or building for the purpose of investigating any major accident,

(l) exercise such other powers as may be necessary for carrying these Regulations into effect.

(2) No one shall be required by virtue of paragraph (1)(f) to answer any question or to give evidence tending to incriminate himself or herself.

(3) Any operator or person in control of an establishment or other place and his or her agents and servants shall furnish the means required by an inspector of the Central Competent Authority as necessary for any entry, inspection, examination, inquiry, taking of samples or for the exercise of any other power under these Regulations.

**Powers of inspectors for purpose of safeguarding persons and the environment.**

31. (1) If an inspector of the Central Competent Authority is of the opinion that an establishment or any part thereof or any things or practices at the establishment or connected with the control or management thereof (including the existence or otherwise of an internal emergency plan) involve or as the case may be, are likely to involve—

(a) a serious deficiency in the measures taken by the operator for the prevention and mitigation of major accidents,

(b) a risk of serious danger to persons or the environment,

(c) a failure to submit any notification, safety report or other information required to be submitted by these Regulations, or

(d) a contravention of these Regulations,

he or she may serve on the operator a notice in writing stating that he or she holds that opinion and giving particulars of the reason why he or she holds that opinion, and imposing upon that operator such prohibitions or restrictions or requirements as appear to the inspector to be necessary for the purpose of safeguarding persons or the environment from any major accident hazard or the consequences of a major accident and the operator shall comply with such prohibition, restriction or requirement, as the case may be.

(2) Where the provisions of paragraph (1)(a) apply the inspector shall serve a notice on the operator prohibiting the operator from operating the establishment or such parts of the establishment as are specified in the notice.

(3) An operator shall comply with the requirements of a notice issued in accordance with paragraphs (1) or (2)—

(a) where an inspector of the Central Competent Authority states in the notice that he or she is of the opinion that—

(i) the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient, or

(ii) the risk of serious danger to persons or the environment is or, as the case may be, will be imminent,

on receipt of the notice,

(b) where subparagraph (a) does not apply and no appeal is taken against the notice—

(i) on the expiration of the period during which such an appeal may be taken, or



(ii) on the day specified in the notice as the day on which it is to come into effect,

whichever is the later,

(c) where subparagraph (a) does not apply and an appeal is taken and the notice is confirmed on appeal or the appeal is withdrawn—

(i) on the day next following the day on which the notice is so confirmed or the appeal is withdrawn, or

(ii) on the day specified in the notice as that on which it is to come into effect, or

(iii) in case the operation of the notice has been suspended in accordance with paragraph (5)(b), on the expiration of the period that the Judge of the District Court considered appropriate for the purpose of that paragraph,

whichever is the later.

(4)(a) Where an operator is aggrieved by a notice served on him or her under this Regulation he or she may, within the period of 7 days beginning on the day on which the notice is so served, appeal to a Judge of the District Court against the notice and in determining the appeal the Judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable so to do, confirm the notice, with or without modification, or

(ii) cancel the notice.

(b) Where on the hearing of an appeal under this paragraph the notice is confirmed, the Judge by whom the appeal is heard may, notwithstanding paragraph (3), on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case he or she considers appropriate.

(c) An appeal by an operator under this paragraph shall be brought before and heard and determined by a Judge of the District Court for the time being assigned to the district where the establishment, or any part thereof, to which the notice served under this Regulation relates is situated.

(d) The Judge determining an appeal under this paragraph may make such order as to the payment of costs in respect of the appeal as he or she considers appropriate.

(5) Where paragraph (3) applies and an appeal is taken, it shall not have the effect of suspending the operation of the notice but the appellant may apply to the court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(6) An inspector may at any time revoke a notice served on an operator under this Regulation.

(7)(a) Where a notice has been served under this Regulation and activities are carried on in contravention of the notice, the High Court may on the application of the Central Competent Authority by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under this paragraph shall be in a summary manner and the Court may, on the application of the Central

Competent Authority, grant such interlocutory orders as it considers appropriate.

**Application to High Court by Central Competent Authority.**

32. (1) If, on an application made in a summary manner by the Central Competent Authority, the High Court is satisfied that either—

(a) the whole or any part of an establishment or an installation thereat, is in such condition or is so constructed or is so placed that it cannot be used without serious risk of a major accident, or

(b) any process or work is carried on or anything is or has been done in an establishment in such a manner as to cause serious risk of a major accident,

the Court shall, as the case may require, order—

(i) the prohibition of the use by the operator of the whole or such part, as may be appropriate, of the establishment or installation thereat, a process or procedure carried on there or, if it is capable of repair or alteration, the prohibition of its use until it is duly repaired or altered, or

(ii) the operator to take such steps as may be specified in the order for remedying the risk of the major accident hazard complained of.

(2) Where an application has been made under paragraph (1) in relation to the whole or any part of an establishment or installation thereat or any process or work which is carried on or anything which is or has been done in an establishment, the Court may, on the application of the Central Competent Authority and on receiving evidence that the use of such part or, as the case may be, the carrying on of such process or work or the doing of such thing involves imminent risk of a major accident, grant such interlocutory orders as it considers appropriate.

(3) The provisions of this Regulation are without prejudice to the provisions of sections 67, 68 and 71 of the Safety, Health and Welfare at Work Act 2005.

**Service of Documents.**

33. (1) Any document (including any summons, notice or order) required or authorised to be served, sent or given under these Regulations on or to any person may be served or sent in one of the following ways—

(a) where it is addressed to him or her by name, by delivering it to such person, or in the case of a partnership by delivery to any of the partners,

(b) by leaving it at the address at which the person ordinarily resides,

(c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides, or in a case in which an address for service has been furnished, at that address,

(d) where the address at which such person ordinarily resides cannot be ascertained by reasonable inquiry and the subject matter of the notice relates to a place of work at which the person is ordinarily engaged, by delivering it to a person over the age of 16 years of age resident in or employed at that place of work or by affixing it in a conspicuous position on or near the place of work concerned.

(2) Any document (including any summons, notice or order) required or authorised to be served or sent under these Regulations may be served on or sent to a body, whether corporate or unincorporated—

(a) by leaving it at, or sending it by post in a prepaid registered letter to, the registered office (if any) of the body,

(b) by leaving it at, or sending it by post in a prepaid registered letter to, any place at which the body conducts business, or

(c) by sending it by post in a prepaid registered letter to any person who is a director, manager, secretary or other officer of the body or who is purporting to act in any such capacity at the place where he or she ordinarily resides or by leaving it at that place.

*Disclosure of information, translations of reports*

**Restrictions on disclosure of information.**

34. (1) Subject to paragraph (2) any information received by a Competent Authority by virtue of a requirement of these Regulations shall, to the extent that it is not information relating to the environment for the purposes of the Access to Information on the Environment Regulations 1998 (S.I. No. 125 of 1998), be treated as being so for those purposes.

(2) Paragraph (1) shall not apply to information involving—

(a) the confidentiality of the deliberations of the competent authorities and the Commission of the European Communities,

(b) the confidentiality of international relations and national defence,

(c) public security,

(d) the confidentiality of preliminary investigation proceedings or of current legal proceedings,

(e) commercial and industrial secrets, including intellectual property,

(f) personal data or files, or

(g) data supplied by a third party if that party asks for them to be kept confidential,

and subject to paragraph (3) and Regulations 23(3) and 24(10), no such information shall be disclosed without the consent of the person by or on behalf of whom it was originally furnished.

(3) Paragraph (2) shall not apply to—

(a) the disclosure of information to a Competent Authority or a Department of State for the purposes of these Regulations,

(b) without prejudice to subparagraph (a), the disclosure by the recipient of information to—

(i) any person for the purposes of any function conferred on the recipient by virtue of these Regulations,

(ii) an inspector of the Central Competent Authority,

(iii) an officer of a local competent authority who is authorised under Regulation 17(7) to receive it,

(c) the disclosure of information for the purpose of any investigation or inquiry held by virtue of the provisions of these Regulations or for the purpose of a report of any such investigation or inquiry made by virtue of the provisions of these Regulations,

(d) the disclosure of information for the purpose of the enforcement of the provision of these Regulations,

(e) the disclosure of information for the purpose of any legal proceedings instituted by or on behalf of a Competent Authority,

(f) the disclosure of information by the Central Competent Authority or the Government in a form calculated to prevent it from being identified as relating to a particular person or case,

(g) the supplying to the Commission of the European Communities, pursuant to Article 15 of the Directive, of the information specified in Annex VI to the Directive (which is set out in Schedule 7) relating to a major accident,

(h) the exchanging with the other Member States of the European Union and with the Commission of the European Communities, pursuant to Article 19 of the Directive, of information on the experience acquired with regard to the prevention of major accidents and the limitation of their consequences.

(4) A person to whom information is disclosed pursuant to paragraph (3) shall not use or disclose that information otherwise than in accordance with these Regulations.

(5) Where a person discloses information to another person for the purposes of these Regulations, the person disclosing the information shall ensure that the other person is aware of the obligations imposed by this Regulation.

(6) In this Regulation information to which paragraph (2) relates means information obtained by a person or furnished to any person in pursuance of any requirement imposed by these Regulations which, in the case of information furnished by an operator in pursuance of such requirements, is clearly identified by him or her as being information so furnished.

#### **Translations of reports.**

35. Every report, notification or other document which is supplied to a competent authority for the purposes of these Regulations in a language other than English shall, except where so supplied in Irish, be accompanied by a translation into English.



## *Offences and penalties*

### **Offences.**

36. (1) A person who contravenes any of the preceding provisions of these Regulations shall be guilty of an offence.

(2)(a) Except in so far as it relates to the application of Regulation 24(9), paragraph (1) shall not apply to a Competent Authority.

(b) Except in so far as it relates to Regulations 24(9) and 34, paragraph (1) shall not apply to an inspector of the Central Competent Authority or to an officer of a local competent authority authorised under Regulation 17(7).

### **Onus of proof.**

37. Where, in any prosecution for an offence under these Regulations, it is alleged that there has been a failure to comply with a duty or requirement to do something so far as is practicable, reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove that (as the case may be) it was not practicable or not reasonably practicable to do more than was in fact done to comply with the duty or requirement, or that there was no better practicable means than was in fact used to comply with the duty or requirement.

### **Liability of operators.**

38. (1) In the event of a contravention in or in connection with or in relation to an establishment of any provision of these Regulations, the operator shall, subject to paragraph (2) and without prejudice to the liability of any other person, be guilty of an offence.

(2) Subject to Regulation 6 in the event of a contravention by any person (other than an operator) of any provision of these Regulations which expressly imposes any duty upon him or her, that person shall be guilty of an offence under this Regulation provided that—

(a) the operator shall not be guilty of an offence by reason only of such contravention if he or she proves that he or she took all practicable steps to prevent the contravention;

(b) this paragraph shall not be taken as affecting any liability of the operator in respect of the same matters by virtue of any other enactment.

**Liability of directors and officers of bodies corporate.**

39. Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other officer of the body corporate, the director, manager, secretary or other officer or any person purporting to act in such capacity shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

**Forgery of documents.**

40. A person who, in relation to any document required for the purposes of these Regulations—

(a) forges or counterfeits any such document,

(b) gives or signs a document knowing it to be false in any material particular,

(c) knowingly utters or uses a document so forged or counterfeited, or which is false as aforesaid,

(d) knowingly utters or uses as applying to any person a document which does not so apply,

(e) wilfully connives at any such forging, counterfeiting, giving, signing, uttering or using,

(f) wilfully makes a false entry in any such document which is so required to be kept, served or sent, or

(g) knowingly uses any such false entry,

shall be guilty of an offence.

**Personation.**

41. A person who—

(a) personates any person named in any document required for the purposes of these Regulations,

(b) falsely pretends to be an inspector of the Central Competent Authority or an officer of a local competent authority authorised under Regulation 17(7), or

(c) wilfully connives at any such personation or pretence,

shall be guilty of an offence.

**Obstruction of inspector or authorised officer.**

42. A person who without reasonable excuse (proof of which shall lie with that person) fails or refuses to comply with a request of, or to answer a question asked by, or who obstructs or interferes with—

(a) an inspector of the Central Competent Authority, or

(b) an officer of a local competent authority authorised under Regulation 17(7), in the course of exercising a power conferred by these Regulations,

shall be guilty of an offence.

**Penalties.**

43. A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or to both.

**Prosecution of offences.**

44. (1) Proceedings for an offence under these Regulations may be brought and prosecuted by the Central Competent Authority.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, proceedings for an offence under these Regulations may be instituted—

(a) at any time within 2 years from the date on which the offence was committed, or

(b) where such proceedings relate to the subject matter of a report made—

(i) to the Central Competent Authority by an inspector pursuant to Regulation 23(1), or

(ii) to the Minister by a tribunal pursuant to Regulation 24(7),

at any time within 12 months from the date on which the report was so made,

whichever is the later.

**Cost of prosecutions.**

45. Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Central Competent Authority the costs and expenses, measured by the court, incurred by the Central Competent Authority in relation to the investigation, detection and prosecution of the offence, including costs

and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees or persons engaged by the Authority.

### *Charges for services*

#### **Charges for services.**

46. (1) A Competent Authority may charge and shall be entitled to be paid for the provision by that Competent Authority of a service or the performance of a duty imposed on any such Authority pursuant to these Regulations, including—

- (a) the examination of notifications or safety reports and any revisions of same,
- (b) the preparation and revision of external emergency plans,
- (c) the testing and putting into effect of emergency plans, and
- (d) the provision of information pursuant to Regulation 34(1).

(2) A charge made by a Competent Authority to which paragraph (1) refers shall be made only in accordance with such scale of charges as may be specified by the appropriate Minister as respects that Competent Authority, which scale of charges may include particulars of the person by whom the fee is payable.

(3) A Competent Authority may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable, any amount due and owing to it under this Regulation.

(4) An operator who makes available to a member of the public, other than a person referred to in Regulation 18(1)(a), the information referred to in Regulation 18(1)(a) or a safety report referred to in Regulation 12 or 13 shall be entitled to charge such person a sum of money in respect of the making available of such information or

safety report provided that the amount of such sum of money does not exceed an amount which is reasonable having regard to the cost of making available the information or safety report concerned.

(5) For the purposes of paragraph (4) the cost of preparing the information or safety report concerned shall be deemed not to be part of the cost of making available such information or safety report.

(6) Nothing in this Regulation shall entitle an operator to charge a person to whom Regulation 18(1)(a) refers for the provision or making available of the information referred to in Regulation 18(1)(a).

## **Schedule 1**

Regulations 3(1) and (3) and 4(1)

### **APPLICATION OF THE DIRECTIVE**

#### **Annex I to Council Directive 96/82/EC as amended by Council Directive 2003/105/EC**

#### **INTRODUCTION**

1. This Annex applies to the presence of dangerous substances at any establishment within the meaning of Article 3 of this Directive and determines the application of the relevant Articles thereof.
2. Mixtures and preparations shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the relevant Directives given in Part 2, Note 1, or their latest adaptation to technical progress, unless a percentage composition or other description is specifically given.
3. The qualifying quantities set out below relate to each establishment.
4. The quantities to be considered for the application of the relevant Articles are the maximum quantities which are present or are likely to be present at any one time. Dangerous substances present at an establishment only in quantities equal to or less than 2 % of the relevant qualifying quantity shall be ignored for the purposes of calculating the total quantity present if their location within an establishment is such that it cannot act as an initiator of a major accident elsewhere on the site.
5. The rules given in Part 2, Note 4 governing the addition of dangerous substances, or categories of dangerous substances, shall apply where appropriate.
6. For the purposes of this Directive, a gas is any substance that has an absolute vapour pressure equal to or greater than 101.3 kPa at a temperature of 20° C.

7. For the purposes of this Directive, a liquid is any substance that is not defined as a gas and that is not in the solid state at a temperature of 20° C and at a standard pressure of 101.3 kPa.

**PART 1**  
**Named substances**

Where a substance or group of substances listed in Part 1 also falls within a category of Part 2, the qualifying quantities set out in Part 1 must be used.

Column 1	Column 2	Column 3
Dangerous substances	Qualifying quantity (tonnes) for the application of	
	Articles 6 and 7	Article 9
Ammonium nitrate (see note 1)	5000	10000
Ammonium nitrate (see note 2)	1250	5000
Ammonium nitrate (see note 3)	350	2500
Ammonium nitrate (see note 4)	10	50
Potassium nitrate (see note 5)	5000	10000
Potassium nitrate (see note 6)	1250	5000
Arsenic pentoxide, arsenic (V) acid and/or salts	1	2
Arsenic trioxide, arsenious (III) acid and/or salts		0.1
Bromine	20	100
Chlorine	10	25



Nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide)		1
Ethyleneimine	10	20
Fluorine	10	20
Formaldehyde (concentration $\geq 90\%$ )	5	50
Hydrogen	5	50
Hydrogen chloride (liquefied gas)	25	250
Lead alkyls	5	50
Liquefied extremely flammable gases (including LPG) and natural gas	50	200
Acetylene	5	50
Ethylene oxide	5	50
Propylene oxide	5	50
Methanol	500	5000
4, 4-Methylenebis (2-chloraniline) and/or salts, in powder form		0.01
Methylisocyanate		0.15
Oxygen	200	2000
Toluene diisocyanate	10	100
Carbonyl dichloride (phosgene)	0.3	0.75
Arsenic trihydride (arsine)	0.2	1
Phosphorus trihydride (phosphine)	0.2	1
Sulphur dichloride	1	1
Sulphur trioxide	15	75

Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent		0.001
The following CARCINOGENS at concentrations above 5% by weight:	0.5	2
4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone		
Petroleum products:	2500	25000
(a) Gasolines and naphthas, (b) Kerosenes (including jet fuels) (c) Gas oils (including diesel fuels, home heating oils and gas oil blending streams)		

#### NOTES

1. Ammonium nitrate (5000/10000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/or potash) in which the nitrogen content as a result of ammonium nitrate is—

- between 15,75% <sup>(1)</sup> and 24,5% <sup>(2)</sup> by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex II of Directive 80/876/EEC,

- 15,75% <sup>(3)</sup> by weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, subsection 38.2).

## 2. Ammonium nitrate (1250/5000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

- more than 24,5% by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90%,
- more than 15,75% by weight for mixtures of ammonium nitrate and ammonium sulphate,
- more than 28%<sup>(4)</sup> by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90%,

and which fulfil the requirements of Annex II of Directive 80/876/EEC

## 3. Ammonium nitrate (350/2500): technical grade

This applies to:

- ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is
- between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances,
- more than 28% by weight, and which contain not more than 0.2% combustible substances
- aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

## 4. Ammonium nitrate (10/50): “off-specs” material and fertilisers not fulfilling the detonation test

This applies to:

- material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in notes 2 and 3, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 2 and 3:

- fertilisers referred to in Note 1, first indent, and Note 2 which do not fulfil the requirements of Annex II of Directive 80/876/EEC.

5. Potassium nitrate (5 000/10 000): composite potassium-nitrate based fertilisers composed of potassium nitrate in prilled/granular form.

6. Potassium nitrate (1 250/5 000): composite potassium-nitrate based fertilisers composed of potassium nitrate in crystalline form.

7. Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

Intentional Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS)			
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeDD	0.5	2,3,4,7,8-PeCDF	0.5
		1,2,3,7,8-PeCDF	0.05
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.001	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.001

(T = tetra, P = penta, Hx = hexa, HP = hepta, O = octa)

(1) 15,75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate

(2) 24,5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate

(3) 15,75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

(4) 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate.

**PART 2**

**Categories of substances and preparations not specifically named in Part 1**

Column 1	Column 2	Column 3
Categories of dangerous substances	Qualifying quantity (tonnes) of dangerous substances as delivered in Article 3 (4), for the application of	
	Articles 6 and 7	Article 9
1. VERY TOXIC	5	20
2. TOXIC	50	200
3. OXIDIZING	50	200
4. EXPLOSIVE (see Note 2) where the substance, preparation or article falls under UN/ADR Division 1.4	50	200
5. EXPLOSIVE (see Note 2) where the substance, preparation or article falls under any of: UN/ADR Divisions 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3	10	50
6. FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(a))	5000	50000
7 a. HIGHLY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(b)(1))	50	200
7 b. HIGHLY FLAMMABLE liquids (where the substance or preparation falls within the definition given in Note 3(b)(2))	5000	50000
8. EXTREMELY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(c))	10	50

9. DANGEROUS FOR THE ENVIRONMENT risk phrases:		
(i) R50: “Very toxic to aquatic organisms” (including R50/53)	100	200
(ii) R51/53: “Toxic to aquatic organisms; may cause long term adverse effects in the aquatic environment”	200	500
10. ANY CLASSIFICATION not covered by those given above in combination with risk phrases:		
(i) R14: “Reacts violently with water” (including R14/15)	100	500
(ii) R29: “in contact with water, liberates toxic gas”	50	200

#### NOTES

1. Substances and preparations are classified according to the following Directives (as amended) and their current adaptation to technical progress:

- Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (<sup>1</sup>),

- Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (<sup>2</sup>)

In the case of substances and preparations which are not classified as dangerous according to either of the above Directives, for example waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major-accident potential, the procedures for provisional classification shall be followed in accordance to the relevant article of the appropriate Directive.

In the case of substances and preparations with properties giving rise to more than one classification, for the purposes of this Directive the lowest qualifying quantities shall apply. However, for the application of the rule in Note 4, the qualifying quantity used shall always be the one corresponding to the classification concerned.

For the purposes of this Directive, the Commission shall establish and keep up to date a list of substances which have been classified in the above categories by a harmonised Decision in accordance with Directive 67/548/EEC.

2. An 'explosive' means:

- a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R 2),
- a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R 3), or
- a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road <sup>(3)</sup>.

Included in this definition are pyrotechnics, which for the purposes of this Directive are defined as substances (or mixtures of substances) designated to produce heat, light, sound, gas or smoke or a combination of such effects through self-sustained exothermic chemical reactions. Where a substance or preparation is classified by both UN/ADR and risk phase R2 or R3, the UN/ADR classification shall take precedence over assignment of risk phrases.

Substances and articles of Class 1 are classified in any of the divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The divisions concerned are:

Division 1.1: Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously).

Division 1.2: Substances and articles which have a projection hazard but not a mass explosion hazard.

Division 1.3: Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard:

- (a) combustion of which gives rise to considerable radiant heat: or
- (b) which burns one after another, producing minor blast or projection effects or both.

Division 1.4: Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package.

Division 1.5: Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test.

Division 1.6: Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article.

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of this Directive. If the quantity is not known, then, for the purposes of this Directive, the whole article shall be treated as explosive.

3. Flammable, highly flammable, and extremely flammable in categories 6, 7 and 8 mean:

(a) flammable liquids:

- substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55°C (risk phrase R 10), supporting combustion;

(b) highly flammable liquids:

1. - substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy (risk phrase R 17),

- substances and preparations which have a flash point lower than 55 °C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;

2. substances and preparations having a flash point lower than 21 °C and which are not extremely flammable (risk phrase R 11, second indent);

(c) extremely flammable gases and liquids:

1. liquid substances and preparations which have a flash point lower than 0°C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal



pressure is less than or equal to 35 °C (risk phrase R 12, first indent), and

2. gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R 12, second indent), which are in a gaseous or supercritical state, and
3. flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point.

4. In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant qualifying quantities, the following rule shall be applied to determine whether the establishment is covered by the relevant requirements of the Directive.

This Directive shall apply if the sum -

$q_1 / Q_{U1} + q_2 / Q_{U2} + q_3 / Q_{U3} + q_4 / Q_{U4} + q_5 / Q_{U5} + \dots$  is greater than or equal to 1,

where  $q_x$  = the quantity of dangerous substance x (or category of dangerous substances) falling within Parts 1 or 2 of this Annex,

and  $Q_{UX}$  = the relevant qualifying quantity for substance or category x from column 3 of Parts 1 or 2

This Directive shall apply, with the exception of Articles 9, 11 and 13, if the sum

$q_1 / Q_{L1} + q_2 / Q_{L2} + q_3 / Q_{L3} + q_4 / Q_{L4} + q_5 / Q_{L5} + \dots$  is greater than or equal to 1,

where  $q_x$  = the quantity of dangerous substance x (or category of dangerous substances) falling within Parts 1 or 2 of this Annex,

and  $Q_{LX}$  = the relevant qualifying quantity for substance or category x from column 2 of Parts 1 or 2.

This rule shall be used to assess the overall hazards associated with toxicity, flammability, and eco-toxicity. It must therefore be applied three times:

- (a) for the addition of substances and preparations named in Part 1 and classified as toxic or very toxic, together with substances and preparations falling into categories 1 or 2;
- (b) for the addition of substances and preparations named in Part 1 and classified as oxidising, explosive, flammable, highly flammable, or extremely flammable, together with substances and preparations falling into categories 3, 4, 5, 6, 7a, 7b or 8;
- (c) for the addition of substances and preparations named in Part 1 and classified as dangerous for the environment (R50 (including R50/53) or R51/53), together with substances and preparations falling into categories 9(i) or 9(ii);

The relevant provisions of this Directive apply if any of the sums obtained by (a),(b) or (c) is greater than or equal to 1.

<sup>(1)</sup>O.J. L 196, 16.8.1967, p.1. Directive as last amended by Regulation (EC) No 807/2003 (O.J. L 122, 16.5.2003, p.36).

<sup>(2)</sup>O.J. L 200, 30.7.1999, p.1. Directive as amended by Commission Directive 2001/60/EC (O.J. L 226, 22.8.2001, p.5).

<sup>(3)</sup>O.J. L 319, 12.12.1994, p.7. Directive as last amended by Commission Directive 2003/28/EC (O.J. L 90, 8.4.2003, p.45).

## Schedule 2

Regulation 10(4)

### **MAJOR ACCIDENT PREVENTION POLICY AND SAFETY MANAGEMENT SYSTEM**

#### **Annex III to Council Directive 96/82/EC**

#### **PRINCIPLES REFERRED TO IN ARTICLE 7 AND INFORMATION REFERRED TO IN ARTICLE 9 ON THE MANAGEMENT SYSTEM AND THE ORGANIZATION OF THE ESTABLISHMENT WITH A VIEW TO THE PREVENTION OF MAJOR ACCIDENTS**

For the purpose of implementing the operator's major-accident prevention policy and safety management system account shall be taken of the following elements. The requirements laid down in the document referred to in Article 7 should be proportionate to the major-accident hazards presented by the establishment:

(a) the major accident prevention policy should be established in writing and should include the operator's overall aims and principles of action with respect to the control of major-accident hazards;

(b) the safety management system should include the part of the general management system which includes the organizational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major-accident prevention policy;

(c) the following issues shall be addressed by the safety management system:

- (i) organisation and personnel — the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation. The identification of training needs of such personnel and the provision of the training so identified. The involvement of employees and, where appropriate, subcontracted personnel working in the establishment;
- (ii) identification and evaluation of major hazards — adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operation and the assessment of their likelihood and severity;
- (iii) operational control — adoption and implementation of procedures and instructions for safe operation, including maintenance, of plant, processes, equipment and temporary stoppages;
- (iv) management of change — adoption and implementation of procedures for planning modifications to, or the design of new installations, processes or storage facilities;
- (v) planning for emergencies — adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis and to prepare, test

and review emergency plans to respond to such emergencies and to provide specific training for the staff concerned. Such training shall be given to all personnel working in the establishment, including relevant subcontracted personnel;

- (vi) monitoring performance — adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major-accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance. The procedures should cover the operator's system for reporting major accidents or near misses, particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learnt;
- (vii) audit and review — adoption and implementation of procedures for periodic systematic assessment of the major-accident prevention policy and the effectiveness and suitability of the safety management system; the documented review of performance of the policy and safety management system and its updating by senior management.

### Schedule 3

Regulation 11(1)

#### **INFORMATION TO BE INCLUDED IN A NOTIFICATION TO THE CENTRAL COMPETENT AUTHORITY**

The notification required by Regulation 11(1) shall contain the following details—

- (a) the name or trade name of the operator and the full address of the establishment concerned;
- (b) the registered place of business of the operator, with the full address;
- (c) the name or position of the person in charge of the establishment, if different from (a);
- (d) information sufficient to identify the dangerous substances or category of substances involved;
- (e) the quantity and physical form of the dangerous substance or substances involved;
- (f) the activity or proposed activity of the installation or storage facility;
- (g) the immediate environment of the establishment (elements liable to cause a major accident or to aggravate the consequences thereof);
- (h) the name of any establishment in proximity where the likelihood and the possibility or consequences of a major accident may be increased because of its location and inventory of dangerous substances;
- (i) a map at a scale of not less than 1:5000 and clearly showing the location and boundary and the immediate environment as set out in paragraph (g) of this Schedule.

**SAFETY REPORTS**

**PART I  
PURPOSE OF SAFETY REPORTS**

A safety report shall be produced for the purposes of—

1. demonstrating that a major accident prevention policy and a safety management system for implementing it have been put into effect in accordance with the information set out in Schedule 2;
2. demonstrating that major accident hazards have been identified and that the necessary measures have been taken to prevent such accidents and to limit their consequences for people and the environment;
3. demonstrating that adequate safety and reliability have been incorporated into the—
  - (a) design and construction, and
  - (b) operation and maintenance,of any installation, storage facility, equipment and infrastructure connected with its operation which are linked to major accident hazards inside the establishment;
4. demonstrating that internal emergency plans have been drawn up and supplying information to enable the external plan to be drawn up in order to take the necessary measures in the event of a major accident;
5. providing sufficient information to the competent authorities and planning authorities to enable decisions to be made in terms of the siting of new activities or developments around existing establishments;
6. containing an updated inventory of the dangerous substances present in an establishment.

## **PART 2**

### **DATA AND INFORMATION IN A SAFETY REPORT**

#### **Annex II to Directive 96/82/EC**

#### **MINIMUM DATA AND INFORMATION TO BE CONSIDERED IN THE SAFETY REPORT SPECIFIED IN ARTICLE 9**

##### **I. Information on the management system and on the organisation of the establishment with a view to major accident prevention.**

This information shall contain the elements given in Annex III.

##### **II. Presentation of the environment of the establishment**

- A. description of the site and its environment including the geographical location, meteorological, geological, hydrographic conditions and, if necessary, its history;
- B. identification of installations and other activities of the establishment which could present a major-accident hazard;
- C. description of areas where a major accident may occur.

##### **III. Description of the installation**

- A. description of the main activities and products of the parts of the establishment which are important from the point of view of safety, sources of major-accident risks and conditions under which such a major accident could happen, together with a description of proposed preventive measures;
- B. description of processes, in particular the operating methods;
- C. description of dangerous substances:
  - 1. inventory of dangerous substances including -
    - the identification of dangerous substances: chemical name, CAS number, name according to IUPAC nomenclature,
    - the maximum quantity of dangerous substances present or likely to be present;
  - 2. physical, chemical, toxicological characteristics and indication of the hazards, both immediate and delayed for people and the environment;

3. physical and chemical behaviour under normal conditions of use or under foreseeable accidental conditions.

#### **IV. Identification and accidental risks analysis and prevention methods**

- A. detailed description of the possible major-accident scenarios and their probability or the conditions under which they occur including a summary of the events which may play a role in triggering each of these scenarios, the causes being internal or external to the installation;
- B. assessment of the extent and severity of the consequences of identified major accidents including maps, images or, as appropriate, equivalent descriptions, showing areas which are liable to be affected by such accidents arising from the establishment, subject to the provisions of Articles 13(4) and 20;
- C. description of technical parameters and equipment used for the safety of installations.

#### **V. Measures of protection and intervention to limit the consequences of an accident**

- A. description of the equipment installed in the plant to limit the consequences of major accidents;
- B. organization of alert and intervention;
- C. description of mobilizable resources, internal or external;
- D. summary of elements described in A, B, and C above necessary for drawing up the internal emergency plan prepared in compliance with Article 11.



## **Schedule 5**

Regulations 15(3) and 17(1)

### **EMERGENCY PLANS**

#### **PART 1**

#### **OBJECTIVES OF EMERGENCY PLANS**

Emergency plans must be prepared with the objectives of—

- (a) containing and controlling incidents so as to minimize the effects, and to limit damage to people, the environment and property,
- (b) implementing the measures necessary to protect people and the environment from the effects of major accidents,
- (c) communicating the necessary information to the public and to the services or authorities concerned in the area, and
- (d) providing for the restoration and clean-up of the environment following a major accident.

#### **PART 2**

#### **DATA AND INFORMATION IN EMERGENCY PLANS**

##### **Annex IV to Council Directive 96/82/EC**

#### **DATA AND INFORMATION TO BE INCLUDED IN THE EMERGENCY PLANS SPECIFIED UNDER ARTICLE 11**

##### 1. Internal emergency plans

- (a) Names or positions of persons authorised to set emergency procedures in motion and the person in charge of and coordinating the on-site mitigatory action.
- ((b) Name or position of the person with responsibility for liaising with the authority responsible for the external emergency plan.
- (c) For foreseeable conditions or events which could be significant in bringing about a major accident, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available.
- (d) Arrangements for limiting the risks to persons on site including how warning are to be given and the actions persons are expected to take on receipt of a warning.

(e) Arrangements for providing early warning of the incident to the authority responsible for setting the external emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available.

(f) Arrangements for training staff in the duties they will be expected to perform, and where necessary coordinating this with off-site emergency services.

(g) Arrangements for providing assistance with off-site mitigatory action.

## 2. External emergency plans

(a) Names or positions of persons authorized to set emergency procedures in motion and of persons authorized to take charge of and coordinate off-site action.

(b) Arrangements for receiving early warning of incidents, and alert and call-out procedures.

(c) Arrangements for coordinating resources necessary to implement the external emergency plan.

(d) Arrangements for providing assistance with on-site mitigatory action.

(e) Arrangements for off-site mitigatory action.

(f) Arrangements for providing the public with specific information relating to the accident and the behaviour which it should adopt.

(g) Arrangements for the provision of information to the emergency services of other Member States in the event of a major accident with possible transboundary consequences.

## Schedule 6

Regulation 18(2)

### PUBLIC COMMUNICATION

#### Annex V to Council Directive 96/82/EC

#### ITEMS OF INFORMATION TO BE COMMUNICATED TO THE PUBLIC AS PROVIDED FOR IN ARTICLE 13(1)

1. Name of operator and address of the establishment.
2. Identification, by position held, of the person giving the information.
3. Confirmation that the establishment is subject to the regulations and/or administrative provisions implementing this Directive and that the notification referred to in Article 6 (3) or the safety report referred to in Article 9 (1) has been submitted to the competent authority.
4. An explanation in simple terms of the activity or activities undertaken at the establishment.
5. The common names or, in the case of dangerous substances covered by Part 2 of Annex 1, the generic names or the general danger classification of the substances and preparations involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics.
6. General information relating to the nature of the major-accident hazards, including their potential effects on the population and the environment.
7. Adequate information on how the population concerned will be warned and kept informed in the event of a major accident.
8. Adequate information on the actions the population concerned should take, and on the behaviour they should adopt, in the event of a major accident.
9. Confirmation that the operator is required to make adequate arrangements on site, in particular liaison with the emergency services, to deal with major accidents and to minimize their effects.
10. A reference to the external emergency plan drawn up to cope with any off-site effects from an accident. This should include advice to cooperate with any instructions or requests from the emergency services at the time of an accident.
11. Details of where further relevant information can be obtained, subject to the requirements of confidentiality laid down in national legislation.

## Schedule 7

Regulations 25(1) and 26(1)

### MAJOR ACCIDENTS AND NEAR MISSES

#### Annex VI to Council Directive 96/82/EC

#### CRITERIA FOR THE NOTIFICATION OF AN ACCIDENT TO THE COMMISSION AS PROVIDED FOR IN ARTICLE 15(1)

**I Any accident covered by paragraph 1 or having at least one of the consequences described in paragraphs 2, 3, 4 and 5 must be notified to the Commission.**

##### 1. Substances involved

Any fire or explosion or accidental discharge of a dangerous substance involving, a quantity of at least 5% of the qualifying quantity laid down in column 3 of Annex 1.

##### 2. Injury to persons and damage to real estate

An accident directly involving a dangerous substance and giving rise to one of the following events:

- a death,
- six persons injured within the establishment and hospitalised for at least 24 hours,
- one person outside the establishment hospitalised for at least 24 hours,
- dwelling(s) outside the establishment damaged and unusable as a result of the accident,
- the evacuation or confinement of persons for more than 2 hours (persons x hours): the value is at least 500,
- the interruption of drinking water, electricity, gas or telephone services for more than 2 hours (persons x hours): the value is at least 1000.

##### 3. Immediate damage to the environment

- permanent or long-term damage to terrestrial habitats:
- 0.5 ha or more of a habitat of environmental or conservation importance protected by legislation,

— 10 or more hectares of more widespread habitat, including agricultural land,

— significant or long-term damage to freshwater and marine habitats(\*)

(\*) In assessing damage, reference could be made where appropriate to Directives 75/440/EEC, 76/464/EEC and Directives adopted for its application in relation to certain substances, namely, Directives 76/160/EEC, 78/659/EEC, 79/923/EEC, or to the Lethal Concentration (LC) for 50% of the species representative of the environment affected as defined by Directive 92/32/EEC for the criterion 'dangerous for the environment'

— 10 km or more of river or canal,

— one ha or more of a lake or pond,

— 2 ha or more of delta,

— 2 ha or more of a coastline or open sea,

— significant damage to an aquifer or underground water(\*\*)

(\*\*) In assessing damage, reference could be made where appropriate to Directives 75/440/EEC, 76/464/EEC and Directives adopted for its application in relation to certain substances, namely, Directives 76/160/EEC, 78/659/EEC, 79/923/EEC, or to the Lethal Concentration (LC) for 50% of the species representative of the environment affected as defined by Directive 92/32/EEC for the criterion 'dangerous for the environment'

— one ha or more.

#### 4. Damage to property

— damage to property in the establishment at least ECU 2 million,

— damage to property outside the establishment; at least ECU 0,5 million.

#### 5. Cross-border damage

Any accident directly involving a dangerous substance giving rise to effects outside the territory of the Member State concerned.

**II. Accidents or 'near misses' which Member States regard as being of particular technical interest for preventing major accidents and limiting their consequences and which do not meet the quantitative criteria above should be notified to the Commission.**

**NOTIFIABLE INCIDENTS**

1. The explosion, collapse or bursting of any closed vessel, including a boiler or boiler tube, in which the internal pressure was above or below atmospheric pressure.
2. An explosion or fire occurring in any installation or place which resulted in the stoppage of any part of the installation or suspension of normal work in that place for more than 24 hours, where such explosion or fire was due to the ignition of process materials, their by-products (including waste) or finished products.
3. The uncontrolled or accidental release or the escape of any dangerous substance from any apparatus, equipment, pipework, pipe-line, process plant, storage vessel, tank or inworks conveyance tanker, which, having regard to the nature of the substance and the extent and location of the release or escape, might have been liable to cause serious injury to any person or serious damage to the environment.
4. Any unintentional ignition or explosion of explosives.
5. Either of the following incidents in relation to a pipe-line containing a dangerous substance:—
  - (a) the bursting, explosion or collapse of a pipe-line or any part thereof;
  - (b) the unintentional ignition of anything in a pipe-line, or of anything which immediately before it was ignited was in a pipeline.

**Annex to Commission Decision 98/433/EC of 26 June 1998**

**HARMONISED CRITERIA FOR DISPENSATIONS ACCORDING TO  
ARTICLE 9 OF COUNCIL DIRECTIVE 96/82/EC ON THE CONTROL OF  
MAJOR ACCIDENT HAZARDS INVOLVING DANGEROUS SUBSTANCES**

A dispensation according to Article 9(6) may be granted if at least one of the following generic criteria is fulfilled:

**Physical form of substance**

Substances in solid form, such that, under both normal conditions and any abnormal conditions which can reasonably be foreseen, a release, of matter or of energy, which could create a major accident hazard, is not possible.

**Containment and quantities**

Substances packaged or contained in such a fashion and in such quantities that the maximum release possible under any circumstances cannot create a major accident hazard.

**Location and quantities**

Substances present in such quantities and at such distances from other dangerous substances (at the establishment or elsewhere) that they can neither create a major accident hazard by themselves nor initiate a major accident involving other dangerous substances.

**Classification**

Substances which are defined as dangerous substances by virtue of their generic classification in Annex I, Part 2 to Directive 96/82/EC, but which cannot create a major accident hazard, and for which therefore the generic classification is inappropriate for this purpose.

GIVEN under my Official Seal,

February 2006

Minister for Enterprise, Trade and Employment.



## **EXPLANATORY NOTE**

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

The purpose of these Regulations is to transpose Council Directive 96/82/EC on the control of major accident hazards involving dangerous substances as amended by Directive 2003/105/EC of the European Parliament and of the Council.

The Regulations revoke and replace –

(i) the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000), and

(ii) the European Communities (Control of Major Accident Hazards Involving Dangerous Substances)(Amendment) Regulations 2003 (S.I. No. 402 of 2003).

The Regulations apply to establishments where dangerous substances are present in amounts equal to or exceeding the application thresholds.

Operators of establishments are required to take all necessary measures to prevent the occurrence of major accidents and to limit the consequences of accidents for people and the environment.

The Regulations impose duties in respect of safety management systems, preparation of safety reports and emergency preparedness.

The Regulations also deal with provision of advice on major hazards in the context of land-use planning decisions.

The Regulations set out the arrangements for the appointment of competent authorities, enforcement and the provision of information.

The Regulations provide for the levying of charges by competent authorities for duties performed pursuant to these Regulations.

The principal changes incorporated in the new Regulations include the following -

Schedule 1 (which replicates the amended Annex 1 of Directive 96/82/EC) determines the application of the Regulations. The definition of dangerous substance has been changed to follow more exactly the definition in Directive 96/82/EC.

The definition of establishment has been extended to cover the situation where two or more areas under the control of the same person and separated only by a road, railway or inland waterway shall be treated as one whole area; this approach will give a more realistic presentation of the major accident profile of an area.

The application of the Regulations has been extended as per Directive 2003/105/EC to cover –

- chemical and thermal processing operations and storage related to operations associated with the exploitation of minerals,
- operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances as defined in Schedule 1, in particular when used in connection with the chemical and thermal processing of minerals.

The non-application of the Regulations to offshore exploration has been made more explicit.

The timeframe (3 months) for the preparation of the major accident prevention policy document (MAPP) by new establishments has been incorporated as per the Directive. Operators of existing establishments must, where necessary, amend their MAPP document within 3 months of the commencement of the Regulations.

The scope of the safety management system to be addressed under the MAPP has been extended as per the Directive to include the role of subcontracted personnel and their training, including preparation for emergencies.

Operators of new establishments must send Notifications to the Central Competent Authority (Health and Safety Authority) within 3 months of the commencement of the Regulations, as per the Directive.

Operators of existing establishments must, where necessary, amend their Notifications within one month of the commencement of the Regulations.

The content of Safety Reports with regard to the assessment of the extent and severity of the consequences of identified major accidents has been further detailed as per the Directive to include maps, images or, as appropriate, equivalent descriptions, showing areas which are liable to be affected by such accidents.

Safety Reports will contain the names of the relevant organisations involved in the drawing up of the report, as required by the Directive.

Operators of establishments which subsequently fall within the scope of the Directive will have one year to submit a Safety Report (as per the Directive) and, where necessary, operators of existing establishments will have 6 months, or longer as may be agreed with the HSA, to amend their reports,

Operators of establishments which subsequently fall within the scope of the Directive will have 6 months to prepare an internal emergency plan.

Operators of existing establishments shall, where necessary, amend their internal emergency plans within one month of the new regulations coming into force.

The Central Competent Authority may consult as appropriate with the Environmental Protection Agency on the information contained in a safety report that is relevant to the possible risks of environmental pollution from a major accident.

Under the Regulations, the Central Competent Authority does not have to rely solely on information from notifications/Safety Reports to determine the presence of a group of establishments where there is likely to be a “domino effect”

The scale of charges applicable under Regulation 46 is that specified from time to time by the relevant Minister.